

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6057**

**PETITION OF MICHELLE L. KLUG**  
(Hearing held March 16, 2005)

**OPINION OF THE BOARD**  
(Effective date of Opinion, April 15, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-B-5.1. The petitioner proposes the construction of a one-story addition that requires a seven (7) foot variance as it is within five (5) feet of the side lot line. The required setback is twelve (12) feet.

The subject property is Lot 61, Block B, Fountain View Subdivision, located at 12213 Dancrest Drive, Clarksburg, Maryland, 20871, in the RDT Zone (Tax Account No. 00032676).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of 20 x 26 foot one-story addition/garage.
2. The petitioner testified that her lot is long and narrow and that the lot narrows from front to rear. The petitioner testified that the topography of the lot drops six feet in the western side yard and nine feet in the eastern side yard. The petitioner testified that the lot's rear yard drops more drastically than its side yards and that the utilities and septic system for the property are located in the rear yard.
3. The petitioner testified that the lots that face her lot all have flat topographies and that the proposed construction would mirror other improvements in the neighborhood.

## **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's property is a long, narrow lot, which narrows from front to back. The subject property's topography in the western side yard drops six feet and the topography in the eastern side yard topography drops nine feet, with a more substantial drop in the property's rear yard. The utilities and septic system for the property are located rear yard.

The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties upon and an undue hardship for the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a one-story addition/garage is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance request will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will be in harmony with other improvements in the neighborhood and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of seven (7) feet from the required twelve (12) foot side lot line setback for the construction of a one-story addition/garage is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Wendell M. Holloway, with Angelo M. Caputo, in agreement, and with Donna L. Barron and Allison Ishihara Fultz, Chair, in opposition, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of April, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the

Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.